

**AGREEMENT BETWEEN
THE COLLIN COUNTY COMMUNITY COLLEGE DISTRICT,
THE CITY OF FRISCO, TEXAS AND
SUPERDROME MANAGEMENT GROUP
REGARDING THE FRISCO SUPERDROME**

THIS AGREEMENT is made and entered by and between the **Collin County Community College District**, a political subdivision of the State of Texas, (hereinafter referred to as "CCCCD"), **City of Frisco, Texas**, a home-rule municipal corporation, (hereinafter referred to as "City"), and **The Superdrome Management Group, Inc.**, a non-profit corporation having 501(c)(3) status with the Internal Revenue Service, (hereinafter referred to as "SMG") (collectively referred to as the "Parties"), to be effective beginning January 1, 2009 (the "Agreement").

WHEREAS, the Parties presently have an agreement establishing the obligations of each party in their connection with the Frisco Superdrome at Collin County Community College District ("Superdrome") that will expire on December 31, 2008;

WHEREAS, the CCCCCD and the City are owners of the Superdrome; and

WHEREAS, the SMG desires to maintain and manage the Superdrome, and schedule and manage events thereat.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the Parties hereto agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 Athletic Building. The Athletic Building (≈ 675 sq. ft.) is located on the NW corner of Superdrome Premises, outside of the Track. The Athletic Building has public restrooms, office space and a storage/utility room.

1.2 Event Management Building. The Event Management Building (≈ 6,216 sq. ft.) is a two-story structure attached to the southern end of the Track.

1.3 Events and Programs. Events and Programs are cycling-specific activities that take place at the Superdrome, including, but not limited to, youth/community cycling development programs, racing programs, local/regional/national/international cycling events, and cycling membership programs, to be organized by SMG.

1.4 Interest Income of the Superdrome Enterprise Fund. The monthly interest payments generated from the current balance of the Superdrome Enterprise Fund, which are currently deposited into the Fund. The Superdrome Enterprise Fund is the Frisco-managed cost center used for Superdrome budgeting.

1.5 Superdrome Premises. The Superdrome Premises consists of approximately six (6) acres of land located on the Preston Ridge Campus of the Collin County Community College District in Frisco. The Superdrome Premises consists of the Track, Athletic Building, Event Management Building, ticket booth and associated grounds and structures, as diagrammed in the original agreement between the Parties.

1.6 Track. The Track is the actual velodrome surface and the supporting steel frame structure. It also encompasses the track infield.

ARTICLE 2 OBLIGATIONS OF THE PARTIES

2.1 CCCCCD OBLIGATIONS. CCCCCD shall be responsible for the following services and related costs for the Superdrome Premises:

- a. Providing parking for Superdrome participants within the Alumni Hall parking lot. If additional parking is needed for any event, the SMG will coordinate with CCCCCD.
- b. Drive-by surveillance of all parking lots and buildings on the Superdrome Premises by the security company that provides such services to CCCCCD for CCCCCD's entire campus. CCCCCD will not provide security services for Superdrome Events and Programs. Security for Superdrome Events & Programs shall be coordinated through the Frisco Police Department at SMG's expense.

2.2 CITY OBLIGATIONS. City shall:

- a. Provide a one-time payment of Ninety Eight Thousand One Hundred Dollars and 00/100 (\$98,100.00) to SMG, within thirty (30) days of the City's signature to this Agreement, for the purpose of Capital Repairs to the Track and Premises from the Superdrome Enterprise Fund. Capital repairs to include:
 1. Seventy Thousand Dollars and 00/100 (\$70,000.00) for replacement of boards on the track surface
 2. Five Thousand Six Hundred Dollars and 00/100 (\$5,600.00) for required hardware for the boards
 3. Six Thousand Dollars and 00/100 (\$6,000.00) for paint and caulk
 4. Eight Thousand Dollars and 00/100 (\$8,000.00) for skilled labor
 5. Two Thousand Dollars and 00/100 (\$2,000.00) for miscellaneous supplies

6. Six Thousand Five Hundred Dollars and 00/100 (\$6,500.00) for sun shade fabric
- b. Provide monthly payments to SMG from the Interest Income of the Superdrome Enterprise Fund in an amount equal to Six Thousand Six Hundred and Sixty-Seven Dollars and 00/100 (\$6,667.00). In the event the Interest Income is either less than or greater than Six Thousand Six Hundred and Sixty-Seven Dollars and 00/100 (\$6,667.00), the City shall add to or withhold from the Interest Income so that SMG only receives Six Thousand Six Hundred and Sixty-Seven Dollars and 00/100 (\$6,667.00) each month. Any amount that the City withholds from the Interest Income shall be placed in the Superdrome Capital Reserve Fund to be used for future capital projects for the Superdrome.
- c. Provide primary use of current track cycling equipment to the SMG. Frisco reserves the right to utilize this equipment for other purposes.
- d. Provide primary use of the Superdrome Premises to the SMG.
- e. Use the funds authorized to be withheld from payments to SMG hereunder and required to be designated as capital reserve for the primary purpose of making capital repairs such as replacing carpet, painting interior walls and water pipe repairs.

2.3 SUPERDROME MANAGEMENT GROUP OBLIGATIONS. SMG shall:

- a. Maintain the track surface to ensure it is constantly and consistently maintained in a safe manner at all times when riders are present and be responsible for the costs associated therewith.
 1. City and CCCCD must pre-approve contract, work, and/or cost prior to any major work being performed.
- b. Organize and execute Events and Programs at the Superdrome. At a minimum, SMG shall:
 1. City must pre-approve all dates and times for all of the SMG proposed Events and Programs and all sponsors for Events and Programs. Approval will not be unreasonably withheld.
 2. SMG will be responsible for all expenses related to Events and Programs and will collect and keep all revenues from Events and Programs.
 3. SMG shall make its books and records available to City or CCCCD upon request for purposes of audit and reviewing financial information.
 4. City reserves the right to utilize the Superdrome Premises for its own events and programs at the City's expense, these events will not conflict with previously approved SMG events. SMG will not be responsible for expenses related to these events.
- c. Maintain and upkeep of all Track cycling related equipment.
- d. Provide a monthly report to City and CCCCD stating:
 1. financial information reflecting all income, including its source, and expenses, including but not limited to all income generated by SMG

- through sponsorships of events and programs at the Superdome ("Sponsorship Income"); and
2. monthly Superdome premises usage report reflecting SMG efforts and participation levels in Superdome related activities, including, but not limited to, Events and Programs.
- e. Within ten (10) days of entering into a sponsorship, or similar, agreement, the SMG shall provide a summary of the sponsorship agreement to the City and CCCCCD stating the company/organization and its contact information, sponsorships details, financial arrangement details and sponsor's timeline for payment of the sponsorship amount.
 - f. Maintain and provide general liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) naming both City and CCCCCD as additional insured's under the policy, and provide evidence thereof within thirty (30) days of execution of this Agreement.
 - g. Arrange for security services for Events and Programs occurring on the Superdome Premises.
 - h. Provide daily maintenance of the buildings including, but not limited to, repairs, cleaning, sound system maintenance, and computer replacement,.
 - i. Pay for all Superdome Premises expenses.
 - j. Provide City a detailed plan within thirty (30) days of the execution of this Agreement for the use of Interest Income of the Superdome Enterprise Fund for City's pre-approval.

ARTICLE 3 TERM OF AGREEMENT

- 3.1 **Term.** This Agreement shall expire on December 31, 2011 ("Term"), unless sooner terminated or renewed as set forth herein.
- 3.2 **Renewal.** This Agreement may be renewed for an additional three (3) year period if the parties agree in writing to the renewal and the terms and conditions thereof prior to the expiration of the Term.

ARTICLE 4 TERMINATION OF AGREEMENT/REMEDIES

- 4.1 **Termination.** The Parties may terminate this Agreement at any time and for any reason, and without prejudice to any other remedy it may have, by providing thirty (30) days written notice to each of the other Parties.
- 4.2 **Remedies.** The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

ARTICLE 5
PROHIBITED INTEREST/CITY PROPERTY/INDEMNITY

- 5.1 Prohibited Interest.** The SMG agrees that it is aware of the prohibited interest requirement of the City Charter, which is repeated on the Affidavit, and will abide by the same. Further, a lawful representative of SMG shall execute the Affidavit attached hereto as Exhibit "A," and incorporated herein by reference for all purposes. SMG understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.
- 5.2 City/CCCCD Property.** All property, materials, equipment and facilities provided to, used or maintained by SMG, including, but not limited to the Track, are and shall remain the sole and exclusive property of the City and/or CCCCCD (the "Owners"), as it was owned prior to entering into this Agreement, or as ownership may be transferred during the Term of this Agreement as determined by the Owners, and may not be shared with third parties or used by SMG for any purposes, except as set forth herein. Any property, whether personal or real, purchased or acquired by SMG using Interest Income of the Superdome Enterprise Fund shall be owned by the City and/or CCCCCD.
- 5.3 Indemnity.** The SMG shall release, defend, indemnify and hold harmless CCCCCD, the members of its Board of Trustees, and its officers, agents, representatives and employees and City and its City Council members, officers, agents, representatives and employees from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work caused by the negligent act and/or intentional act and/or omission of SMG, its officers, agents, representatives, employees, subcontractors, licensees, invitees or any other third parties for whom SMG is legally responsible (hereinafter "Claims"). SMG is expressly required to defend CCCCCD and City against all such Claims.

In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by SMG in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. In their sole discretion, CCCCCD and/or City reserve the right to provide a portion or all of their individual defenses; however, CCCCCD and/or City are under no obligation to do so. Any such action by CCCCCD and/or City is not to be construed as a waiver of SMG's obligation to defend CCCCCD and/or City or as a waiver of SMG's obligation to indemnify CCCCCD and/or City pursuant to this Agreement. SMG shall retain CCCCCD and/or City approved defense counsel for each party within seven (7) business days of CCCCCD's and/or City's written notice that CCCCCD and/or City is

invoking its right to indemnification under this Agreement. If SMG fails to retain counsel within such time period, CCCC and/or City shall have the right to retain defense counsel on its own behalf, and SMG shall be liable for all costs incurred by CCCC and/or City.

ARTICLE 6 MISCELLANEOUS

- 6.1 Notice.** Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

the CCCC: Office of the President
 Collin County Community College District
 4800 Preston Park Blvd.
 Plano, Texas 75086-9055
 telephone 972-758-3800
 facsimile 972-758-5468

the City: City of Frisco, Texas
 Attn: City Manager
 6601 Frisco Square Blvd.
 Frisco, Texas 75034
 telephone 972-292-5000
 facsimile 972-377-4091

and the SMG: Superdrome Management Group
 c/o Tim Goodwin
 3909 Merriman Drive
 Plano, TX 75074
 mobile # (972) 523-9452

- 6.2 Complete Agreement.** This Agreement constitutes the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by all parties. However, this Agreement shall not, and is intended not to, supercede any prior written agreements directly executed between the City of Frisco and CCCC relating to the Superdrome. Said agreements between the City of Frisco and CCCC shall remain in full force and effect.

- 6.3 **Assignment and Subletting.** The SMG agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City and CCCCD. The SMG further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the SMG of its full obligations to the City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through SMG, and there shall be no third party billing.
- 6.4 **Successors and Assigns.** City, CCCCD and SMG, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 6.5 **Severability.** In the event a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.
- 6.6 **Venue.** This entire Agreement is performable in Collin County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any manner connected therewith shall be Collin County, Texas, and this Agreement shall be construed under the laws of the State of Texas.
- 6.7 **Execution/Consideration.** This Agreement is executed by the parties hereto without coercion or duress any for substantial consideration, the sufficiency of which is forever confessed.
- 6.8 **Authority.** The individuals executing this Agreement on behalf of the respective parties below represented to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date thereof.
- 6.9 **Waiver.** Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

- 6.10 **Headings.** The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 6.11 **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 6.12 **Sovereign Immunity.** The parties agree that no party to this Agreement has waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 6.13 **Representatives.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 6.14 **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.

Effective Date: January 1, 2009

**COLLIN COUNTY COMMUNITY COLLEGE
DISTRICT**

By: _____

Name: Cary Israel

Title: President

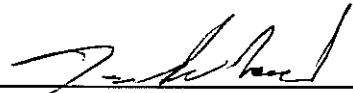
CITY OF FRISCO, TEXAS

By: _____


Name: George Purefoy

Title: City Manager

SUPERDROME MANAGEMENT GROUP

By: 
Name: Timothy Goodwin
Title: president

Approved as to Form:


City Attorney
Abernathy, Roeder, Boyd & Joplin, P.C.

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Before me, the undersigned authority, a notary public in and for this State of Texas, on this day personally appeared Cary Israel, President, Collin County Community College District, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 2005.

Notary public in and for the State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Before me, the undersigned authority, a notary public in and for this State of Texas, on this day personally appeared George Purefoy, City Manager of the City of Frisco, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration expressed, and in the capacity therein stated.

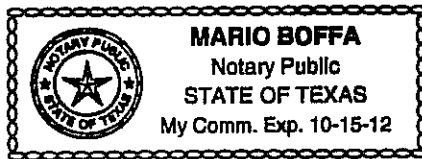
Given under my hand and seal of office this ____ day of _____, 2005.

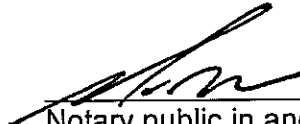
Notary public in and for the State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Before me, the undersigned authority, a notary public in and for this State of Texas, on this day personally appeared TIMOTHY GODWIN, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration expressed, and in the capacity therein stated.

Given under my hand and seal of office this 7 day of JANUARY, ~~2005~~ ²⁰⁰⁹





Notary public in and for the State of Texas

Exhibit "A"

AFFIDAVIT

THE STATE OF TEXAS §

COUNTY OF Collin §

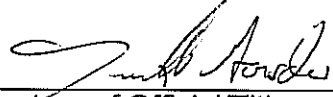
I, Timothy Goodwin a member of the consultant team, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the project (check all that apply);

- ☐ Ownership of 10% or more of the voting shares of the business entity.
- ☐ Ownership of \$2,500 or more of the fair market value of the business entity.
- ☐ Funds received from the business entity exceed 10% of my income for the previous year.
- ☐ Real property is involved and I have an equitable or legal ownership with a fair market value of at least \$2,500.
- ☒ None of the above.
- ☐ A relative of mine has substantial interest in the business entity or property that would be affected by my decision of the public body of which I am a member.
- ☐ Other: _____

Upon the filing of this affidavit with the City of Frisco, Texas, I affirm that no relative of mine, in the first degree by consanguinity or affinity as defined in Chapter 573 of the Texas Government Code, is a member of the public body which took action on the agreement.


Signed this _____ day of _____, 20____.



Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared TIMOTHY GOODWIN and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this 7 day of JANUARY, 2009.



Notary Public in and for
The State of Texas
My commission expires: 10/15/12

